Criminal Appeal No.86-DB of 1998

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Risala alias Arsayal and others **...**Appellants

VERSUS

State of Haryana **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Vinod Ghai, Advocate and
Mr.J.S. Bedi, Advocate,
for the appellants.

Mr. S.K. Hooda, Senior Deputy Advocate General,
Haryana.

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MOHINDER PAL, J.

This appeal has been preferred by appellants Risala alias Arsayal, Balwant Singh alias Banta, Sant Singh and Anchal

against the judgment dated January 19, 1998, passed by the learned Additional Sessions Judge, Jagadhari, whereby they were convicted under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as `the Code') and the sentence order of the same date sentencing each of them to undergo rigorous imprisonment for life and to pay Rs.1,000/- as fine. In default of payment of fine, they were ordered to undergo further rigorous imprisonment for six months.

2. The prayer made in this appeal is to set aside the impugned judgment and the sentence order and to acquit the appellants of the charge framed against them by accepting this appeal.

3. Brief facts of the case are that agricultural land of the accused party adjoins the land of Sukhbir (deceased) and there was a dispute between them regarding the intervening `Dole' (boundary wall) of their fields. Demarcation of the land was done by the revenue authorities a few days prior to the occurrence.

On October 20, 1996, at about 3.30 P.M, Sukhbir and his brother Tirath Ram had gone to plough their fields on HMT Zetor tractor, which was being driven by Sukhbir. Sukhdevi (complainant), sister of Sukhbir and Tirath Ram, was also going from the side of the Village towards the fields with water when she saw Risala (accused) armed with a `Kassi' (spade) and other three accused, namely, Balwant Singh, Sant Singh and Anchal, armed with `Lathis' running towards the fields.

Anchal (accused) gave a `Lathi' blow on the back of Sukhbir. Risala (accused) gave a blow from the reverse side of `Kassi' on his back. Sant Singh and Balwant Singh (accused) also gave `Lathi' blows on the hands of Sukhbir. The accused also proceeded towards Tirath Ram, brother of Sukhbir (deceased). He ran away from the spot and stood at a distance out of fear. Complainant Sukhdevi tried to rescue her brother, but she was also given `Lathi' blows by Anchal and Balwant Singh (accused).

Sukhbir (deceased) ran away from the spot on his tractor, but all the accused chased him and continued giving him blows with their weapons. On reaching the fields of Mehandi Shah, Sukhbir fell down from the tractor and became unconscious. Thereafter, all the accused ran away from the spot with their weapons.

After some time, Paras Ram, father of complainant, and many other persons of the village reached the spot. By that time, Sukhbir had breathed his last.

Sukhdevi (complainant), along with her father Paras Ram and Deputy Sarpanch Baljit Singh, was proceedings towards the Police Station to lodge a report. Sub Inspector Jawala Singh, who had received a telephonic call about the murder of Sukhbir and was proceedings towards Village Bansewala, met them on the way. Sukhdevi made her statement (Exhibit P.J) to Sub Inspector Jawala Singh, which led to the registration of the present First Information Report under Section 302 read with

Section 34 of the Code against the accused.

4. Sub Inspector Jawala Singh then went to the spot. He prepared inquest report Exhibit P.C and rough site plan Exhibit P.U. A `parna' (piece of cloth like a towel), which was stained with blood and was found lying at the spot, was taken into possession after making it into a parcel. The tractor was taken into possession.

All the accused were arrested by Sub Inspector Jawala Singh, Investigating Officer, on October 22, 1996. On October 23, 1996, they were interrogated by the Investigating Officer. They made disclosure statements (Exhibits P.K to P.N) that they had kept concealed their weapons of offence in the bushes in the area of Village Mianpur and offered to get the same recovered. Their statements were reduced into writing, which were thumb marked by them. In pursuance of their disclosure statements, each of the accused led the police party and got recovered `Lathis' and `Kassi', which were taken into possession vide recovery memos Exhibits P.O to PR.

`Parna' Exhibit P.1 was sent to the Forensic Science Laboratory, Madhuban, District Karnal. Blood was detected on Exhibit P.1 vide report Exhibit P.H of the laboratory examination.

5. On completion of investigation, challan was put in against the appellants.

6. Charge was framed against the appellants for the offence punishable under Section 302 read with Section 34 of the

Code. They did not plead guilty to the charge and claimed trial.

7. In order to succeed, the prosecution examination as many as nine witnesses, namely, P.W.1 Dr. Ravi Kansal, P.W.2 Dr.Ashwani Kashyap, P.W.3 Subhash Chand, P.W.4 Sukhdevi, P.W.5 Tirath Ram, P.W.6 Yova Ram, P.W.7 Shiv Dayal, P.W.8 Suresh Kumar and P.W.9 Sub Inspector Jawala Singh, Investigating Officer.

8. P.W.1 Dr. Ravi Kansal on October 21, 1996 at 8.30 A.M along with Dr. T.K. Gupta conducted post mortem examination on the dead body of Sukhbir and found the following injuries:-

"1. Multiple abrasions of various sizes and shapes on anterior parts of both legs, posterior part of left leg, left knee, anterior medical aspect of left thigh.

2. Bruise 4 cm x 2 cm posterio-lateral aspect of left forearm (upper 1/3rd).

3. Bruise 1cm x 1 cm on posterio -lateral aspect of right forearm near elbow.

4. Bruise 12 cm x 7 cm on right iliac area of abdomen.

5. Bruise 6 cm x 2 cm on right lower back.

6. Bruise 4 cm x 2 cm on back of right chest on the lower part.

7. Bruise 2 cm x 1 cm on right scapular area."

According to the opinion of the Doctors, the cause of

death was due to haemorrhage, shock and injuries to lung and brain which were ante mortem in nature and sufficient to cause death in normal course of events. Exhibit P.A is post mortem report.

P.W.2 Dr. Ashwani Kashyap on October 21, 1996, at 12.20 P.M medico-legally examined complainant Sukhdevi and found the following injuries on her person:-

1. Swelling on base of left index finger of size 3 x 2 cm bluish pink in colour non-tender. Advised X-ray.
2. A bruise pinkish blue in colour on left forearm 5 cm from wrist joint of size 4 x 2 cm.
3. Swelling on right side of forehead 3 cm above the right eyebrow of size 2 x 2 cm.

The Doctor opined that the injuries found on the person of Sukhdevi were possible by `Lathis' Exhibits P.1 to P.3. Exhibit P.D is copy of medico-legal report.

P.W.3 Subhash Chand, Constable, mechanically tested the tractor which was being driven by Sukhbir (deceased). He proved his report Exhibit P.F.

P.W.4 Sukhdevi (complainant) and P.W.4 Tirath Ram, an eye-witness, supported the case of prosecution and narrated the manner in which Sukhdev (deceased) received injuries and ultimately died.

P.W.6 Yova Ram deposed about the making of disclosure statements by the accused and effecting of

recoveries of `Lathis' and `Kassi' used in the crime.

P.W.7 Shiv Dayal, Patwari. Proved the `Aks shajra' Exhibit P.S.

P.W.8 Suresh Kumar, Constable, delivered the special report of the case to the Magistrate on October 20, 1996. at 9.50 P.M.

P.W.9 Sub Inspector Jawala Singh gave an account of the investigation conducted by him.

9. In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused denied the prosecution allegations and pleaded false implication.

Accused Risala stated that Sukhbir (deceased) was demolishing with his tractor the `dole' (boundary line) which was given as per demarcation between the land of the accused party and the complainant party. Balwant Singh (accused) tried to stop him. Sukhbir ran over Balwant Singh under the tractor. Sukhbir thought that Balwant Singh had died and when due to fear Sukhbir jumped from the tractor with the intention to run away from the spot, he fell down and received injuries on account of fall and died.

Similar statements were made by accused Balwant Singh, Sant Singh and Anchal.

10. They examined four witnesses in defence.

D.W.1 Rattan Lal, Retired Qanungo, proved the demarcation report Exhibit D.Q.

D.W.2 Vinod Kumar, an employee of M/s. Agro

Kings, Jagadhri, dealing in sale of Zetor HMT Tractors, stated that there is a support of about two feet at the back of Driver's seat in Zetor Tractor.

D.W.3 Dr. T.K. Gupta of Civil Hospital, Jagadhri, had medico-legally examined Balwant Singh (appellant) on October 20, 1996 and had found three abrasions on his chest and lateral surface of right hip. He proved his report Exhibit D.B.

On the same day, he medico-legally examined Risala (appellant) and observed one contusion on the left side of his face. His medical report in this regard is Exhibit D.C.

D.W.4 Sawan Ram deposed that demarcation of the land of complainant party and the accused party was done in his presence.

11. Learned Additional Sessions Judge, Jagadhri, after taking into account the version put forward by P.W.4 Sukhdevi, eye witnesses, which has been further corroborated by P.W.1 Dr. Ravi Kansal and P.W.2 Dr. Ashwani Kashyap, found the accused guilty of the offence punishable under Section 302 read with Section 34 of the Code and convicted and sentenced them, as stated in the opening part of the judgment.

12. We have heard the learned counsel for the parties and have perused the entire record with their assistance.

13. Learned counsel for the appellants has raised two-fold argument. According to him, the trial Court doubted the presence of Tirath Ram (P.W.5) at the spot, but erred in believing the presence of Sukhdevi (P.W.4) on the ground that

her presence was admitted by the accused in bail application (Exhibit P.Z) and also on the ground that she herself received injuries in the occurrence. According to him, the injuries on the person of Sukhdevi, which are swelling on base of left index finger, bruise on left forearm and swelling on right side of forehead, are simple in nature and could be self-suffered. He also referred to the medico-legal examination of Sukhdevi (complainant) and stated that it was done on October 21, 1996 at 12.20 P.M whereas the occurrence had taken place on October 20, 1996 at about 3.30 P.M i.e after more than 26 hours of the occurrence.

14. On the other hand, learned Senior Deputy Advocate General, appearing for the State of Haryana, controverted these arguments by referring to the dispute between the parties which was going on regarding `Dole' (boundary line) between their fields. He further referred to the statement of P.W.4 Sukhdevi, who has stated that she was present at the time of occurrence and had also received injuries from the hands of the accused, which is corroborated by the evidence of P.W.2 Dr. Ashwani Kashyap.

15. After giving careful consideration to the arguments of both the sides, the arguments of the learned counsel for the appellants are devoid of any force. The occurrence in this case is proved from the statement of P.W.4 Sukhdevi, who herself received injuries in the occurrence. Though the injuries suffered by her are simple in nature, but it was not the case

of the accused party before the trial Court that these injuries were self-suffered, nor she was subjected to cross-examination on this point. No doubt, regarding the presence of P.W.5 Tirath Ram at the spot, the trial Court observed that "looking to the normal human conduct, the presence of Tirath Ram is held to be doubtful at the spot", but the trial Court was justified in recording conviction of the appellants on the basis of the statement of Sukhdevi (P.W.4). It appears that the above finding regarding the presence of P.W.5 Tirath Ram was recorded by the trial Court taking into account the fact that he did not try to save his brother from the hands of the accused. The presence of P.W.4 Sukhdevi has been admitted by the accused themselves in their bail application, copy of which is Exhibit P.Z. The bail application was filed on January 24, 1997 by Sant Singh and Anchal accused admitting therein that in the scuffle that took place at the spot between Risala and Balwant accused, on the one side, and Sukhbir (deceased), on the other side, Sukhbir as well as his sister Sukhdevi received injuries. So, the argument of the learned counsel for the appellants that she was not medically examined on the day of occurrence, is without any force. We find that the statement of P.W.4 Sukhdevi, irrespective of her relationship with the deceased, is credible and can safely be acted upon. A few discrepancies here and inconsistencies there are there in her statement, but it is such a short-coming from which, perhaps, no criminal case is free. Moreover, it is not the case of the accused

party that someone else caused injuries to Sukhdev (deceased). Rather, the accused have admitted in many words that there was a dispute regarding common boundary wall as a result of which a scuffle/altercation had taken place. The ocular account given by P.W.4 Sukhdevi finds support from the medical evidence furnished by P.W.1 Dr. Ravi Kansal, who has explained the injuries on the person of Sukhdev (deceased) and cause of death in this case and P.W.2 Dr. Ashwani Kashyap, who proved the injuries suffered by P.W.4 Sukhdevi.

16. Last of all, learned counsel for the appellants contended that the appellants had only knowledge that injuries inflicted by them were likely to cause death and they had no intention to commit the murder of Sukhbir. If the appellants intended to do so, they would have caused him more fatal injuries with force. Hence, their conviction under Section 302 read with Section 34 of the Code is not sustainable. He referred to the injuries recorded by P.W.1 Dr. Ravi Kansal in the post mortem report Exhibit P.A, which are abrasions and bruises on legs, forearms, abdomen, lower back, back of right chest and scapular area. According to him, these injuries were simple in nature and caused with blunt weapon. No injury on the chest was found which could have resulted in laceration of lung. No injury was found on the head where membranes of brain were found conjested. No such injury on these sites is attributed to any of the appellants. Thus, according to him, the cause of death i.e laceration of the lung and conjestion of the brain, could not be

foisted on the appellants and, at the most, they can be held liable under Section 304, Part II of the Code.

17. This argument of learned counsel for the appellants has been controverted by learned State counsel. He contended that the accused, after forming an unlawful assembly and arming themselves with weapons, came with the common object to cause injuries to Sukhbir (deceased) when he was standing in his fields. They also caused injuries to P.W.4 Sukhdevi when she tried to save Sukhdev. When Sukhdev was trying to save his life while running on the tractor, the accused continued chasing him and causing injuries to him until they were sure regarding his death. According to him, the ingredients of Section 302 read with Section 34 of the Code are fully proved in this case and the accused have been rightly held guilty.

18. We have given our thoughtful consideration to the contentions put forth by both the sides. We find force in the argument of the learned counsel for the appellants. All the accused were armed with `Lathis' and a spade at the time of occurrence, which cannot be said as deadly weapons. The deceased and his sister received injuries while they were standing in their fields. The injuries received by Sukhdev (deceased) at that time were on his legs and arms. This fact is even proved from the statement of P.W.4 Sukhdevi, who stated as below:-

" Anchal accused gave a `Lathi' blow on the back

of my brother Sukhbir. Risala accused gave him a blow from the reverse side of `Kassi'. Sant Ram and Banta accused gave `Lathi' blows on the hands of Sukhbir. My brother Tirath Ram was standing in the fields. The accused ran towards him but he ran away out of fear and stood at a long distance from the place of occurrence. When I tried to intervene, I was given lathi blows by Anchal and Banta accused. I was given `lathi' blows on my forehead and left hand. When my brother Sukhbir tried to run away with his tractor, the accused chased him and gave lathi blows"

She further stated that "my brother Sukhbir fell down from the tractor in the fields of Mehandi Shah and became unconscious. Then all the accused ran away.....". It is quite possible that the injuries by fall may have aggravated the injuries already received by the deceased from the hands of the accused. In his cross-examination, P.W.1 Dr.Ravi Kansal has also admitted that "the injuries found on the dead body can be possibly suffered by a fall from a tractor attached with tillers."

From a close perusal of the injuries recorded by the Doctor, it is revealed that none of the injuries found on the body of the deceased was on vital parts. Rather, these are abrasions and bruises on non-vital parts of the body.

In the case of **Om Parkash v. State of Haryana**, AIR 1981 Supreme Court 642, the Sessions Judge convicted the appellant under Section 304 of the Code and sentenced him to undergo R.I for 5-1/2 years. The High Court took a different view. It convicted him under Section 302 of the Code and sentenced him to undergo life imprisonment. The Hon'ble Supreme Court took more lenient view and convicted him under Section 304, Part II of the Code and sentenced him to undergo R.I for seven years. The facts were that there was a quarrel between the accused and the victim. The accused, incensed by situation, gave blow with stick on vulnerable part of victim's body resulting in his death. It was held that offence under Section 304, Part II of the Code was made out, not under Section 302 of the Code and the judgment of the High Court was reversed.

In the case of **State of Punjab vs. Fauja Singh and others**, 1997 (1) Chandigarh Criminal Cases 385 (High Court), there were seven injuries, six on non-vital parts and seventh on spleen, which proved fatal. Dimension of injuries showed that weapons of offence were not used with force. Co-accused had caused injuries in furtherance of their common intention with the knowledge that their act was likely to cause death. It was held that offence was punishable under Section 304/34 of the Code and altered from Section 325 read with Section 34 of the Code. R.I for ten years was awarded.

In the case of **Madhusudan Satpathy and others v. State of Orissa**, 1994 Criminal Law Journal 144 (Supreme Court),

medical evidence showed that only one fatal injury on head of the deceased was caused. Other injuries were found simple. No deadly weapon was used. It was held that the accused had only knowledge that injuries inflicted by them were likely to cause death and had no intention of cause death. One accused had given `Bhala' blow on right temporal region of the head. Second accused gave a blow on the right side of his death with a wooden plank. Third accused had given a blow on the bridge of the nose. The other accused had given `Lathi' blows. Conviction by the High Court under Section 304, Part I of the Code and sentence of six years' rigorous imprisonment was altered to Section 304, Part II of the Code and sentence was reduced to three years' rigorous imprisonment.

In the case of **Kotwal v. State of Madhya Pradesh**, 1994 Criminal Law Journal 255 (Supreme Court), the appellant was convicted by the High Court under Section 304, Part II of the Code and and was sentenced to undergo R.I for five years. No interference was made by the Hon'ble Supreme Court. The accused had caused injury on head of the deceased by throwing a stone, as a result of which the brain matter came out.

So, in this case, in our opinion, offence under Section 304, Part II read with Section 34 of the Code is made out. Offence under Section 302 read with Section 34 of the Code is not made out and the finding recorded by the trial Court in this regard is set aside.

The appeal is, therefore, partly allowed. The impugned

judgment and sentence order are modified. The appellants are convicted under Section 304, Part II read with Section 34 of the Code. Each of them is sentenced to undergo rigorous imprisonment for eight years. The sentence of fine and the default clause i.e. Rs.1,000/ fine and in default of payment thereof to undergo rigorous imprisonment for six months, as has been ordered by the trial Court, shall remain unaltered.

With the above modification, this appeal is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

October 15, 2007.
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(MOHINDER PAL)
JUDGE